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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 23, 2001

PETITION OF

THE CITY OF NORFOLK

CASE NO. PUE000485

For declaratory judgment

ORDER GRANTING ORAL ARGUMENT

On September 26, 2000, the City of Norfolk ("Norfolk") filed a petition for declaratory judgment ("Petition") with the State Corporation Commission ("Commission") requesting that the Commission declare that: (1) the City of Virginia Beach ("Virginia Beach") must obtain permission from the Commission pursuant to § 25-233 of the Code of Virginia ("Code") to condemn any property belonging to Norfolk; and (2) such permission must be obtained before Virginia Beach can initiate condemnation proceedings in the Circuit Court of the City of Virginia Beach ("Circuit Court").

In the Petition, Norfolk represents that it owns land identified as the real property and facilities known as the Stumpy Lake reservoir ("Stumpy Lake") and the property in the immediate vicinity of Stumpy Lake ("Adjacent Property"), and located in Virginia Beach and the City of Chesapeake. The Virginia Beach City Council has voted to condemn the property.

On October 10, 2000, we issued an Order Inviting_Response and Request for Hearing.¹ On October 24, 2000, Virginia Beach filed a Motion to Dismiss and Answer arguing, among other things, that the Commission lacks jurisdiction under both the Constitution of Virginia and the Code to determine disputes solely between two municipal corporations; that Norfolk has an adequate remedy in the Circuit Court; and since the issue was raised in the Circuit Court prior to the filing of the Petition, the Circuit Court first acquired cognizance of the issue and should dispose of it.

On November 3, 2000, Norfolk filed a Response to Virginia Beach's Motion arguing, among other things, that there are no constitutional issues and that the General Assembly intended for the Commission to have jurisdiction; that there is no remedy in the Circuit Court; and that the Commission first had cognizance since Virginia Beach had filed an application for condemnation previously. Norfolk also requested oral argument be scheduled on its Petition. Virginia Beach filed a Motion for Leave to File a Reply Memorandum and a Reply Memorandum in support of its Motion on November 16, 2000. Virginia Beach also requested an

¹ Our October 10, 2000, Order Inviting Response and Request for Hearing issued in this matter describes more particularly the property in question, the Petition, Virginia Beach's condemnation petitions filed in the Circuit Court, Norfolk's motions filed in the Circuit Court, and the application Virginia Beach filed with the Commission, but later withdrew. The petitions and motions are still pending in the Circuit Court.

opportunity for oral argument on its Motion. Both parties subsequently filed additional pleadings.²

NOW UPON CONSIDERATION of this matter, based upon questions arising from the pleadings and required factual determinations, we will allow Norfolk and Virginia Beach an opportunity to present oral argument on the Petition.

Accordingly, IT IS ORDERED THAT:

(1) A hearing is hereby set for February 6, 2001, at 10:00 a.m. in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia.

(2) The Commission will hear oral argument from Norfolk and Virginia Beach concerning whether Virginia Beach must obtain permission from the Commission pursuant to § 25-233 of the Code for approval to initiate condemnation proceedings on any property belonging to Norfolk prior to filing in the Circuit Court.

(3) Norfolk and Virginia Beach shall address in their oral argument the effect of § 15.2-1906 of the Code on this matter.

(4) This matter is continued generally.

Chairman Moore will not participate in this matter.

² On November 21, 2000, Norfolk filed a Motion of the City of Norfolk for Leave to File a Reply, and Reply Memorandum. On November 29, 2000, Virginia Beach filed a Motion of the City of Virginia Beach for Leave to File a Reply Memorandum to the City of Norfolk's Second Memorandum, and Reply Memorandum.